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HAROLD B. WILL

IN THE

Supreme Court of the United States

OCTOBER TERM, 1952.

No. 720

LE ROY G. CHARLES, JOHN L. CHARLES, MARY E. CHARLES, WOODROW CHARLES, DOCK CHARLES, EUGENE CHARLES, and GRADY JONES,

Petitioners,

vs.

CITY OF CHICAGO, a Municipal Corporation,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

BRIEF FOR RESPONDENT IN OPPOSITION.

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CHAMPLIN-SHEALY COMPANY, CHICAGO 303

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ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

BRIEF FOR RESPONDENT IN OPPOSITION.

The respondent, City of Chicago, a municipal corporation, opposes the petition for certiorari on the following grounds:

I.

The poultry ordinance properly and reasonably regulates the retail live poultry business for the protection of the health and welfare of the public and does not violate the Constitution of the United States.

The petitioners admit "that all phases of the poultry business in Illinois are subject to reasonable regulation by the respondent herein" (Petition for Writ of Certiorari,

p. 23) but seek to show that the Supreme Court of Illinois deprived them of constitutional rights when it held that the poultry ordinance "... is designed to protect public health by imposing more stringent sanitation requirements upon a business involving the sale of food for human consumption, and one which may also be offensive ..." (Petition for Writ of Certiorari, p. 59); *Charles* v. *City of Chicago,* 413 Ill. 428, 432.

This holding does not present a federal or constitutional question. It presents the judgment of the Supreme Court of Illinois that the regulations of the poultry ordinance are reasonable and designed to correct abuses inimical to the public health and welfare.

The petitioners are complaining, not of want of due process but of an alleged erroneous decision of the Supreme Court of Illinois in the course of the usual judicial process. The Federal Constitution offers no guarantee of correct decisions.

Ballard v. *Hunter,* 204 U. S. 241, 258.
Chicago L. Ins. Co. v. *Cherry,* 244 U. S. 25, 30.

The petitioners try to create the impression that the poultry ordinance excludes retail live poultry dealers from doing business in the City of Chicago. It does not do this. It merely provides the conditions that such a business must meet.

It is a matter of common knowledge, and such that judicial notice is taken thereof, that the retail live poultry business is an offensive, unwholesome business that is a nuisance and municipalities have the power to prohibit it entirely. (*Harmison* v. *City of Lewiston,* 153 Ill. 313.)

In fact, the preamble to the poultry ordinance clearly states the reason for its passage. It provides:

> "Whereas, the handling and slaughtering of live poultry and other fowl, in and about retail food establishments, requires that such poultry and fowl be de-

> livered in crates and other receptacles which are deposited upon the sidewalks of the City, and, when emptied, remain thereon for considerable periods of time; and whereas, the handling and slaughtering of live poultry and fowl, in and about retail food establishments, requires that such poultry and fowl be opened, cleaned and plucked, whereby the refuse, blood and feathers remain therein for considerable periods of time; and whereas, this creates a nuisance and attracts rats and other vermin, causing health and other hazards; therefore, for the purpose of protecting the health and welfare of the people of Chicago from such unclean and insanitary conditions, in and about retail food establishments: . . ."

The preamble could also have included the stench and noxious odors emanating from retail live poultry markets. This characteristic of retail live poultry markets was recognized in *Roich* v. *Board of Commissioners of Union City,* 168 A. 165 (Supreme Court of New Jersey). In that case an ordinance vested in the municipality's health officer and board of commissioners the discretion to license live poultry markets.

The plaintiff sought a writ of *mandamus* to compel the issuance of a license to operate a live poultry market. The court refused the writ and said (p. 165):

> "Live poultry markets are not favorably regarded by the health officer of Union City because of the stench and vermin incident thereto. It seems that the board of commissioners may very well refuse to issue new permits for what they believe to be an unnecessary and an unsanitary business."

In *Paterson* v. *Johnson,* 214 Ill. 481, the court held valid an ordinance of the City of Chicago regulating the construction or removal of wooden buildings within its corporate limits but outside the "fire limits". The court said (p. 488):

> "the city council—of a city—organized under that act (City and Village act) has the power to declare what

shall be considered nuisances and to abate and remove the same,—, and we think the power to regulate the construction or removal of wooden buildings anywhere within the corporate limits of such municipalities is clearly implied as incident to those powers, although such powers are conferred upon such municipalities only in general terms."

The court cited (p. 489) *King* v. *Davenport,* 98 Ill. 310, and quoted from said case (p. 489):

> "The inquiry then must be whether the enactment of such a law (declaring what shall constitute a nuisance) is within the competency of legislative power. Unwholesome trades, slaughter-houses, operations offensive to the senses,—may all, says Chancellor Kent, be interdicted by law in the midst of dense masses of population, on the general and rational principle that every person ought to so use his property as not to injure his neighbors, and that private interests must be subservient to the general interests of the community. (2 Kent's Com. 340.)"

The court also cited (p. 490) *Wadleigh* v. *Gilman,* 12 Me. 405, and quoted from said case (p. 490):

> "Police regulation may forbid such a use and such modification of private property as would prove injurious to the citizens generally. This is one of the benefits which we derive from associating in communities. It may sometimes occasion an inconvenience to an individual, but he has a compensation in participating in the general advantage. Laws of this character are unquestionably within the scope of the legislative power without impairing any constitutional provisions."

Instead of complaining about the poultry ordinance, which is designed to transform the retail live poultry business into one that will not be a public nuisance, the petitioners should be more than willing to comply with the provisions of the poultry ordinance, in order not to be legislated out of business.

The petitioners have gone to great lengths in their petition to show that the poultry ordinance is unconstitutional because it deprives them of property rights without due process of law. We submit that in the instant case, the subject matter,—retail live poultry markets,—without any doubt, falls within the police power, so that the cases cited by petitioners are not applicable.

The petitioners take the position that since they complied with the ordinances in effect at the time they went into the retail live poultry business, they cannot now be compelled by the present ordinance to do anything further to remain in business (Petition for Writ of Certiorari, p. 24). They admit their business is subject to regulation but they want to fix the regulations.

In *City of Chicago* v. *Arbuckle Bros.*, 344 Ill. 597, an ordinance of the City of Chicago providing for sanitary regulations and licensing of wholesale food establishments was held valid. The court said (p. 604):

> "If there is a reasonable connection between any business or occupation and danger to the public a reasonable ground for regulation is presented. Insanitary conditions in the production, keeping, handling and sale of food may result in unwholesome food and affect the health of the persons who purchase it. The probability of the existence of these conditions renders the business of the sale of food a proper one for municipal regulation, *and the city council is the judge of the expediency or regulation.* (*Ruban* v. *City of Chicago,* 330 Ill. 97.)" (Emphasis added.)

In *City of Chicago* v. *R. & X. Restaurant,* 369 Ill. 65, a restaurant ordinance was held valid that defined food dispensers, regulated the storage, handling and sale at retail of foods and drinks intended for human consumption; provided regulations as to dining rooms, kitchens, storerooms, pantries, refrigerators, plumbing, screens and employees; designated the manner of cleaning dishes, eating and drink-

ing vessels, silverware, kitchenware and utensils; provided for protection of foods from rats, mice, vermin, insects, flies and dust; required the wearing by employees of suitable, clean and washable clothing; provided for the disposition of refuse and garbage and the keeping of receptacles therefor; and practically covered the entire field of regulation of the business of selling to the public at retail foods and drinks for consumption on the premises.

A comparison of the restaurant ordinance with the poultry ordinance shows that they are, for all practical purposes, identical in their objectives. The poultry ordinance accomplishes for the protection of the public the same things that the restaurant ordinance does.

The provisions of the poultry ordinance relating to the type of material and mode of construction of the preparation or slaughtering room are objected to by petitioners on the grounds that compliance therewith will cost petitioners money and that the regulations of the former ordinance are adequate. Here the petitioners again assume to legislate for the city council.

We submit that every regulation in the poultry ordinance is reasonable and necessary for the public health and welfare. The most important police power of a municipality is that of caring for the safety and health of the community, and ordinances for that purpose should be liberally construed. (*Biffer* v. *City of Chicago*, 278 Ill. 562; *Williams* v. *City of Chicago*, 266 Ill. 267.)

A rightful exercise of the police power is not a violation of the fourteenth amendment even though property interests are affected. (*The People* v. *Weiner*, 271 Ill. 74, 78.)

II.

The fact that the poultry ordinance is limited to the retail live poultry business and does not regulate every phase of the poultry business does not make it arbitrary or discriminatory between businesses because such a limitation is proper and reasonable.

The petitioners seek to show that the poultry ordinance arbitrarily discriminates against them because it does not apply to dressed poultry dealers and wholesale poultry dealers.

The difference between a retail live poultry market and a retail dressed poultry market is so obvious as to need no explanation.

This difference was fully recognized by the Supreme Court of Illinois when it said (Petition for Writ of Certiorari, p. 61), *Charles* v. *City of Chicago,* 413 Ill. 428 (p. 434):

> "It is common knowledge that the retail live poultry business, as suggested in the preamble of the ordinance, involves the shipment of live chickens and other fowl in crates into retail stores, and the killing, bleeding, disemboweling and eviscerating of such poultry, with its attendant stench, refuse, vast quantities of blood, waste matter from the live chickens, and noise. Moreover, the blood and entrails attract vermin and rats, and the refuse incidental to the plucking and cleaning, plus the empty filthy crates stored on the sidewalks, forms an ideal breeding place for such vermin and disease germs. . . .
>
> "In contrast, the operations of the retail dressed-poultry dealers, while located in the same area, involve, at most, evisceration of the poultry, and the refuse incidental thereto. The operations of these retail dressed-poultry dealers do not involve the shipment of live chickens in crates, with the attendant waste matter from the live poultry, vermin and stench; nor do

> they involve the killing, plucking and bleeding, with the extensive refuse and pools of blood, which attract rats and flies, nor the storing of dirty crates on the sidewalks. It is not merely the presence of a 'few additional feathers' which distinguishes the classes, as suggested by plaintiff. In fact, it is difficult to perceive how the operations of the retail live-poultry dealers and the retail dressed-poultry dealers can be classed together with respect to the public health hazards they create; hence, it is in no way arbitrary to differentiate between these two classes and to regulate only the retail live-poultry dealers whose operations have a far more dangerous effect on public health."

The petitioners try to put themselves in the same classification as a wholesale poultry dealer by claiming that wholesale poultry dealers do the same acts they do, such as slaughter, bleed, remove the feathers, the heads and feet from, and eviscerate the poultry. The fact that wholesale poultry dealers do the same thing as the retail live poultry dealers does not put both in the same class for legislative purposes. They are different in that one is a wholesaler and one is a retailer. They are different in that under the zoning laws of the City of Chicago they are in different districts. A retail live poultry store is permissible in a business district (Municipal Code of Chicago, section 194A-10 [6], while "Poultry, game and small animal hatching, raising, breeding killing, packing and storage for wholesale distribution" are only permissible in a manufacturing district (Municipal Code of Chicago, section 194A-12 [2]) and obviously do not affect the public generally. In manufacturing districts, noise and odors are not as bothersome a nuisance as in a business district or one close to residences and living quarters, because of the very nature of a manufacturing district and the many industrial uses found there. But in places near where people live or collect in large numbers for health, recreation, education and worship, the filth and noisome odors

of slaughter, the rats attracted by the odor of blood, the vermin, lice and poultry droppings brought into the vicinity on the poultry and in the crates, creates a nuisance and a health hazard which justifies the classification, necessitates the regulation, and affords a compelling need for regulating the distance of slaughter of poultry from the specified places.

The legislature may, in the exercise of the police power, classify persons if the classification is based upon some reasonable distinction having reference to the object of the legislation. (*Josma* v. *Western Steel Car Co.*, 249 Ill. 508, 516.)

It is well settled that law-making bodies possess a broad discretion in making classifications for legislative purposes, and that the exercise of this power will not be judicially disturbed unless clearly unreasonable. (*People* v. *Callicott*, 322 Ill. 390, 392; *Biffer* v. *City of Chicago*, 278 Ill. 562, 573-575; *Casparis Stone Co.* v. *Industrial Board*, 278 Ill. 77, 80.)

In *Stearns* v. *City of Chicago*, 368 Ill. 112, the city council amended its public garage licensing ordinance and classified garages into Class I or housed garages, and Class II or open-air garages. The license fee prescribed for open-air garages was 400 per cent higher than that exacted from housed garages, and the ordinance was attacked as being unlawfully discriminatory against open-air garages and hence violative of the federal and state constitutions. The court upheld the constitutionality of the ordinance and said (p. 117):

> "Laws will not be regarded as special or class legislation merely because they affect one class and not another, provided they affect all members of the same class alike. (*People* v. *Sisk*, 297 Ill. 314 and *People* v. *Callicott*, 322 id. 390.) A classification will be sustained if it is reasonably adapted to secure the purpose

> for which it is intended and not purely arbitrary, and such a classification will not be disturbed by the courts, unless it can be clearly seen there is no fair reason for the distinction made."

In *Larson* v. *City of Rockford*, 371 Ill. 441, 446, it was held that the fact that the operation of automatic machines dispensing confectioneries was regulated by one ordinance and retail confectionery stores were regulated by another ordinance did not render the ordinance regulating the machines arbitrary or discriminatory.

In *Illinois Cigarette Service Co.* v. *City of Chicago*, C. C. A. Ill., 89 F. 2d 610, it was held that an ordinance prohibiting the use of automatic vending machines for the sale of cigarettes in order to prevent sales to minors was within the powers conferred on the City of Chicago and not unconstitutional as depriving manufacturers and lessors of such machines of their property without due process of law, or as unreasonably and arbitrarily discriminating between persons and businesses of the same general class and character. The court said (p. 612):

> "In *Grundling* v. *City of Chicago*, 176 Ill. 340, . . . the court said: 'When the city council considers some occupation or thing dangerous to the health of the community, and, in the exercise of its discretion, passes an ordinance to prevent such a danger, it is the policy of the law to favor such legislation as being humane and essential to the preservation and protection of the community. Municipalities are allowed a greater degree of liberty of legislation in this direction than any other.'"

The petitioners claim "that they who buy, slaughter and sell poultry to retail dealers may legally operate in a business district" (Petition for Writ of Certiorari, p. 26) and cite section 194A-11 of the Municipal Code of Chicago as authority. They did not make this contention below and are in error when they now make it.

Section 194A-11 pertains to commercial districts and not business districts and although it allows "any use permitted in a business district" it does not allow commercial uses in business districts.

We deny that the term "wholesale produce market" used in section 194A-11 allows a slaughter house in a commercial district. The definition of "produce" cited by petitioners from *State* v. *Hurst,* 41 P. (2d) 1079, 1081, fails to sustain their claim. In any event, wholesale slaughterers are not allowed in business districts.

The Supreme Court of Illinois recognized as valid the reason why the poultry ordinance differentiates between retail and wholesale live poultry dealers. It said (Petition for Writ of Certiorari, pp. 62-63); *Charles* v. *City of Chicago,* 413 Ill. 428 (p. 435):

> "With reference to the classification between the wholesale and retail-live poultry dealers, it is apparent that while their operations are identical in many respects, nevertheless, they are conducted in different proximity to the public. The court may properly take judicial notice of the zoning ordinance whereby wholesale live-poultry dealers may operate only in a manufacturing district. (Municipal Code of Chicago, section 194A-12 (2).) Under these circumstances, the noxious operations of the wholesalers are not conducted in an area which the public must traverse for its shopping or its recreation, or in close proximity to dwelling places, churches, hospitals, or other places where people congregate, as are the operations of the retail live-poultry dealers. Consequently, the dangers to the public health from the vermin, disease germs, rats, stench, and other nauseous elements incidental to the live-poultry business are not as great from the operations of the wholesale dealers as they are from the operations of the retail-live-poultry dealers. Therefore, a legitimate basis for differentiation exists between these two classes, which warrants imposing the additional sanitation requirements upon only the retail live-poultry dealers.

> "On the basis of this analysis it is our judgment that the classification effected by the controverted ordinance is neither arbitrary nor discriminatory, and therefore, in no way constitutes a denial of due process or equal protection of the laws, or of other rights guaranteed by the State and Federal constitutions."

In *Hadacheck* v. *Sebastian,* 239 U. S. 394, this court held valid an ordinance of the city of Los Angeles prohibiting the manufacturing of bricks within specified limits of the city. This court said (p. 413):

> "In his petition and argument something is made of the ordinance as fostering a monopoly and suppressing his competition with other bricklayers. The charge and argument are too illusive. It is part of the charge that the ordinance was directed against him. The charge, we have seen, was rejected by the Supreme Court, and we find nothing to justify it.
>
> "It may be that brick yards in other localities within the city where the same conditions exist are not regulated or prohibited, but it does not follow that they will not be. That petitioner's business was first in time to be prohibited does not make its prohibition unlawful. And it may be, as said by the Supreme Court of the State, that the conditions justify a distinction. However, the inquiries thus suggested are outside of our province.
>
> ". . . we cannot declare invalid the exertion of a power which the city undoubtedly has because of a charge that it does not exactly accommodate the conditions or that some other exercise would have been better or less harsh. We must accord good faith to the city in the absence of a clear showing to the contrary and an honest exercise of judgment upon the circumstances which induced its action."

In view of the foregoing, it is clear that petitioners' contentions of invalidity based upon the claim of unreasonable classification and lack of uniformity in operation are not sustainable.

The petitioners' exception to the fact that the Supreme Court of Illinois reversed part of the judgment not appealed from is not well taken. We submit that it does not present a question that comes within the purview of a petition for certiorari. The Supreme Court of Illinois properly took the view that it should decide the validity of every section of the poultry ordinance.

III.

There are no important questions of law or policy involved.

It is respectfully submitted that this case presents no important questions of federal law and that it is not in conflict with the decisions of this court or with those of any other federal court of appellate jurisdiction. There is no showing that this decision does more than help the City of Chicago to protect the public from the abuses of a business which has been held to be a nuisance.

Conclusion.

For the foregoing reasons it is respectfully submitted that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

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